

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
September 14, 2006 Session

**IN THE MATTER OF F. C. M.**

**Appeal from the Juvenile Court for Sumner County**  
**No. 71-448     Barry Brown, Judge**

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**No. M2006-00774-COA-R3-PT - Filed on February 12, 2007**

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Mother appeals termination of parental rights for persistence of conditions under Tenn. Code Ann. § 36-1-113(g)(3) claiming the Department failed to make reasonable efforts at reunification and that termination was not in the child's best interest. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court**  
**Affirmed**

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM B. CAIN and FRANK G. CLEMENT, JR., J.J., joined.

Randy P. Lucas, Gallatin, Tennessee, for the appellant, D. S. M.

Robert E. Cooper, Jr., Attorney General and Reporter; Elizabeth C. Driver, Assistant Attorney General, for the appellee, State of Tennessee, Department of Children's Services.

**OPINION**

This is a mother's appeal of the termination of her parental rights to her daughter who was eight years of age at the time of the termination. The trial court found that the Department of Children's Services ("DCS") had proved by clear and convincing evidence that termination was appropriate due to abandonment, Tenn. Code Ann. § 36-1-113(g)(1), and persistence of conditions, Tenn. Code Ann. § 36-1-113(g)(3). The trial court further found by clear and convincing evidence that it was in the child's best interest that Mother's rights be terminated. Mother appeals claiming DCS did not prove by clear and convincing evidence that grounds existed to terminate her rights or that it was in the child's best interest.

On appeal, DCS does not argue that the evidence supports a termination based on the statutory ground of abandonment. DCS, however, argues that the termination should be sustained due to the existence of persistent conditions as described in Tenn. Code Ann. § 36-1-113(g)(3).

## I. FACTUAL HISTORY

Mother was born in 1970 and has a traumatic history of sexual abuse, mental illness and substance abuse. Mother was sexually molested, a runaway and in foster care by the time she was age 15. Her first marriage produced a son.<sup>1</sup> During this period in her early twenties, Mother was hospitalized for attempted suicide, charged with public intoxication and DUI several times, was in an abusive marriage, and was imprisoned for theft and burglary.

In 1995, Mother remarried and had a second son. The second marriage was also abusive. Mother's parental rights to this son were involuntarily terminated. Mother wanted another child, and since her husband was in jail she had a "one-night stand" to get pregnant, resulting in the birth of her daughter ("F.C.M.") on Christmas Day in December of 1997.<sup>2</sup> During the pregnancy with F.C.M., Mother's parole was revoked, and she served three months in jail. While Mother had contact with DCS after F.C.M. was born, her daughter was not removed from her care until the child was five years old.

In August of 2003, Mother and five-year old F.C.M. were living with her husband's uncle. Mother was not employed. Believing the uncle had inappropriately touched the child, Mother attacked the uncle with a knife. When questioned by the police and a DCS Child Protective Services investigator, the child revealed that it was the Mother who was the source of the allegations and not the child. Mother was then arrested for making a false police report. Upon her arrest, she admitted to the police that she would test positive for cocaine. When the child spoke with an investigator, she said Mother smoked a pipe that "made her act stupid" and that she, the child, had seen Mother smoke it. Since Mother was in jail and no one else was identified who could care for the child, F.C.M. entered DCS custody on August 7, 2003.<sup>3</sup> On August 11, 2003, DCS filed a Petition for Emergency Removal of F.C.M..

The DCS case manager, Ms. Moody, met with Mother the day after her arrest. Thereafter, on August 12, Ms. Moody and others met with Mother for a team decision meeting about F.C.M. At that meeting, the parties discussed the need for Mother to get stable housing, mental health services, alcohol and drug assessments, and have random drug screens. Mother signed off on a report evidencing these conversations. Mother remained incarcerated until August 13 or 14, 2003. Upon her release from jail, Mother made no inquiries about F.C.M. The DCS caseworker tried to call Mother and went to Mother's address twice looking for her. When Mother contacted Ms.

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<sup>1</sup>The son was 17 years old at the time of the hearing. He had been reared by his maternal grandmother and family friends. It is not clear from the record whether Mother's parental rights to this son were terminated, but it is clear she was not involved in his parenting.

<sup>2</sup>The parental rights of both Mother's husband and the man named as the biological father have been terminated without appeal.

<sup>3</sup>When F.C.M. came into custody she was unkempt, had a urinary tract infection, and had serious dental problems.

Moody, DCS arranged for Mother to have a supervised visit with F.C.M. on August 19, 2003. When Mother dozed off several times during the visit, DCS asked her to take a drug test which she refused. Mother admitted that she had smoked crack cocaine during her release.

Mother was arrested on August 20 for DUI. Mother was in and out of jail during the last of August. On August 25, 2003 Mother did not attend the permanency plan meeting. At that time, the plan had concurrent goals of reunification, adoption and exit custody to live with relatives.<sup>4</sup> The date given for achievement of one of these goals was February 25, 2004. Mother's responsibilities included: (1) drug and alcohol assessment, follow the assessment's recommendations and submit to random drug screens; (2) parenting classes; (3) clinical assessment and follow recommendations; (4) provide safe housing and environment; and (5) keep the child from unsafe people and situations. Ms. Moody later took the permanency plan to Mother in jail, discussed it with her, including the criteria and procedures for termination. Mother's signature on the permanency plan is dated November 7, 2003.

At Mother's request, Ms. Moody set up a visitation with F.C.M. for September 2, 2003. Mother did not call or show up for the visit. Ms. Moody later called the jail and learned that Mother had been arrested again on September 1 for DUI and drug paraphernalia and missed the visit because she was in jail. Mother remained in jail from September 2 through mid-December 2003.

On September 3, 2003, the court found F.C.M. to be a dependent and neglected child due to Mother's incarceration. Although Mother was incarcerated at the time of this hearing, she was transported to the hearing from jail.

During the four month period Mother was jailed in the fall of 2003, DCS arranged for nine visits between Mother and F.C.M. at the jail. On the last visit, December 15th, the child refused to see Mother.

During this four month period, DCS provided other services to Mother. It was arranged so Mother could call her daughter collect from jail. While she was in jail, DCS arranged for Mother to have a psychological evaluation, drug and alcohol assessment, counseling, and parenting classes. Mother could not go due to her continued incarceration. DCS then arranged for a psychologist to evaluate her in jail, but she had been released. When she got out of jail, Mother visited with F.C.M. on December 29, 2003 at the DCS office. She tested positive for both marijuana and cocaine. She was allowed to visit since the child had been looking forward to the visit, but was told if she tested positive again on a visit, it would be cancelled. This was to be Mother's last visit with F.C.M.

When Mother was released from jail, Ms. Moody got the request for services for Mother reapproved so she could again offer services that would help Mother comply with the permanency

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<sup>4</sup>Ms. Moody testified that it was unusual to have adoption as a goal initially. However, given Mother's history and that her two sons were raised by others, it seemed appropriate as an alternate goal in this case. Even though adoption was included, Ms. Moody testified it did not reduce her efforts at reunification.

plan. As described below, once released from jail Mother would not cooperate with DCS and even refused to provide her location.

F.C.M.'s foster parents testified at the hearing that when Mother was in jail, she would regularly call F.C.M. When she was out of jail, on December 29, 2003, Mother's conversations with the foster parents escalated, culminating in the foster parents' request that Mother stop calling. Mother threatened physical harm to F.C.M.'s foster mother. In addition to erratic behavior by Mother with the foster family, she also told F.C.M. to disregard her foster family's instructions on topics like learning to share. As a result, Ms. Moody told the foster parents to stop allowing F.C.M. to have phone contact with Mother.

The next visit with F.C.M., scheduled for January 5, 2004, was cancelled because Mother tested positive for marijuana and cocaine. When Mother was advised of the cancellation, she threw a bag of gifts at Ms. Moody. Ms. Moody noted the gifts smelled like they had been soaked in kerosene. The gifts had to be discarded. After this aborted January 5, 2004 visit, DCS had difficulty contacting Mother.

Ms. Moody tried several avenues to locate Mother in January of 2005, but was unable to do so.<sup>5</sup> DCS set up another appointment for a psychological evaluation that Mother did not attend. Because of Mother's disinterest, DCS held a family and team meeting to change the goal of the permanency plan to adoption. Mother was advised by letter sent to her last known address and through her attorney of this review meeting held on February 4, 2004. Mother did not appear. At that meeting, DCS removed the concurrent goals of reunification or living with a relative, leaving the only goal to pursue adoption for F.C.M. Later that month, on February 17, Mother called Ms. Moody to ask about F.C.M., but refused to tell Ms. Moody her location. Mother was told of the permanency plan change during this conversation.

The DCS case worker continued to try to locate Mother in March of 2004. She called the Department of Human Services to ask if Mother was receiving benefits. Upon calling law enforcement, Ms. Moody learned Mother had violated her probation and a warrant had been issued for her arrest.

From December 2003 until March 11, 2004, Mother remained out of jail. When out of jail, however, Mother had minimum contact with F.C.M. Mother told Ms. Moody that she did not try to see F.C.M. after December 29 since she knew there were warrants outstanding for her arrest and she was afraid the case manager would call her probation officer to have her arrested. Ms. Moody testified that while Mother was out of jail she made no effort to cooperate with Ms. Moody or complete any tasks on the permanency plan. On March 11, 2004, Mother was arrested yet again for DUI. When she was taken into custody, jail personnel discovered she had drug paraphernalia hidden

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<sup>5</sup>Ms. Moody called the last person Mother had stayed with and her probation officer. She also checked with public housing and Department of Human Services since she knew Mother was getting food stamps. The public housing representative informed Ms. Moody that Mother had been evicted.

on her body. Mother remained in prison through the trial of this matter. After the March 11, 2004 incarceration, Mother did not ask to visit with F.C.M. At her most recent parole hearing in December of 2004, Mother became angry with the parole board, telling them to “go f\*%\* themselves.” Her parole was denied, and her earliest possible release was set for June of 2006.

Beginning on March 26, 2004, DCS began transitioning F.C.M. from her foster family to a pre-adoptive home. By June of 2004, the transition was complete, and F.C.M. was placed with a family who was interested in adoption.

When questioned about Mother’s stability, Ms. Moody testified that the steady thing about Mother was her “constantly getting arrested.” In April of 2004, Ms. Moody visited Mother in jail. During that visit, Mother told Ms. Moody she wished she had killed the uncle instead of hurting him. Mother also said she wanted to hurt F.C.M.’s foster mother. Ms. Moody explained to Mother at that meeting again about the revised permanency plan.

DCS filed its petition to terminate Mother’s parental rights on December 9, 2004. The trial was held in September of 2005. Mother testified that she had abused drugs and alcohol most of her adult life and had resumed the abuse when she was released from jail. Furthermore, Mother testified that she had participated in substance abuse programs off and on throughout her life. While incarcerated, from April through May of 2005 Mother completed substance abuse classes, anger management classes, parenting classes, and domestic violence classes.

After DCS filed the petition, Mother was given a psychological evaluation by Dr. Sandra Phillips on January 14, 2005. The purposes of the evaluation were to determine if she was competent to assist her counsel in the termination proceedings, as well as to provide a psychological assessment and a parenting assessment. Dr. Phillips found Mother to be competent.

The termination hearing was held on September 22 and 23, 2005. Although Mother was incarcerated at that time in the Tennessee Prison for Women, Mother was transferred to the custody of the Sumner County Sheriff so she could attend the hearing. Among those who testified at the hearing were Mother, Ms. Moody, F.C.M.’s foster parents, and Dr. Phillips, who evaluated Mother. With regard to Dr. Phillips’ testimony, the court found:

Dr. Sandy Phillips evaluated the Defendant Mother in prison and testified at the trial. She reviewed the patient’s prior psychological records from Middle Tennessee Mental Health, which diagnosed the Defendant Mother with Anti-Social Personality and Borderline Personality Disorder. Dr. Phillips opined that of these two diagnoses, the Borderline Personality Disorder has a bigger impact on parenting due to the inherent instability of the patient. She described the Defendant Mother as having poor impulse control and an enmeshed relationship with [F.C.M.] that could be problematic. Dr. Phillips was unimpressed with the Defendant Mother’s sobriety and ability to complete parenting and other classes while in prison due to the structured

atmosphere. She warned that the Defendant Mother had no skills in relapse prevention and that the best predictor of future behavior is past behavior.

The trial court found that DCS did not assist Mother in completion of her responsibilities under the permanency plan. The court, however, agreed with DCS that it was not able to do so because Mother was either incarcerated or, when released, Mother intentionally avoided contact with the DCS case manager. Based on the foregoing, the trial court found that there existed grounds under both Tenn. Code Ann. § 36-1-113(g)(1) (abandonment) and Tenn. Code Ann. § 36-1-113(g)(3) (persistence of conditions) to terminate Mother's parental rights. With regard to persistence of conditions, the trial court found as follows:

However, the Court further finds by clear and convincing evidence that grounds exist for termination of the Defendant Mother's parental rights to the child pursuant to T.C.A. § 36-1-113(g)(3) in that the subject child has been removed from the Defendant Mother for more than six (6) months and the conditions which led to removal or other conditions which in all probability would cause the child to be subjected to further abuse or neglect and which, therefore, prevent the child's return to the care of the Defendant still persists; that there is little likelihood that these conditions will be remedied at an early date so that the child can be returned to her mother in the near future, and that the continuation of the legal parent and child relationship greatly diminishes the child's chance of early integration into a stable and permanent home. The earliest that the Defendant Mother will be released from the penitentiary is July 2006. Before this Court would feel comfortable returning F.C.M. to her mother's custody, it would have to see a long period of stability, sobriety and compliance with mental health treatment. The mother's current mental health is in question and the likelihood that she will be compliant with mental health treatment once she is released is even more questionable, based on her past history. The Court is not at all optimistic that the reasons the child came into custody can be corrected and finds that the likelihood of successful reunification is minimal.

Finally, the trial court examined the factors in Tenn. Code Ann. § 36-1-113(i) and determined that clear and convincing evidence supported the conclusion that termination was in the best interest of the child.

### **III. STANDARD FOR TERMINATION OF PARENTAL RIGHTS**

A court may terminate a person's parental rights only if (1) the existence of at least one statutory ground is proved by clear and convincing evidence and (2) it is shown, also by clear and convincing evidence, that termination of the parent's rights is in the best interest of the child. Tenn. Code Ann. § 36-6-113(c); *In re Adoption of A.M.H.*, \_\_\_\_ S.W.3d \_\_\_\_, 2007 WL 160953 (Tenn. Jan. 23, 2007); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). The higher evidentiary standard, as well as procedural safeguards, exist to prevent unwarranted government interference with a

parent's fundamental and constitutionally protected right to the care and custody of his or her children.

The statutes on termination of parental rights provide the only authority for a court to terminate a parent's rights. *Osborn v. Marr*, 127 S.W.3d 737, 739 (Tenn. 2004). Thus, parental rights may be terminated only where a statutorily defined ground exists. Tenn. Code Ann. § 36-1-113(c)(1); *Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002); *In re M.W.A.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). To support the termination of parental rights, only one ground need be proved, so long as it is proved by clear and convincing evidence. *In the Matter of D.L.B.*, 118 S.W.3d 360, 367 (Tenn. 2003).

There have been various and varying descriptions of the standard of review this court is to apply when reviewing a trial court's decision in a termination of parental rights case. However, our Supreme Court has most recently indicated that the question of whether a statutory ground has been proved by the requisite standard of evidence is a question of law to be reviewed *de novo* with no presumption of correctness.<sup>6</sup> *In re the Adoption of A.M.H.*, 2007 WL 160953, at \*14 ("As a question of law, the trial court's ruling that the facts of this case sufficiently support the termination ground of willful abandonment are reviewed *de novo* with no presumption of correctness.") A similar approach was taken in *In re Valentine*, 79 S.W.3d 539, 548 (Tenn. 2002) (holding that the question of substantial noncompliance with the requirements of a permanency plan was a question of law reviewed *de novo* with no presumption of correctness.)

Consequently, we will review the trial court's holding that the ground of persistence of conditions was proved by clear and convincing evidence *de novo* with no presumption of correctness. To the extent the trial court made findings of fact in support of that ultimate conclusion, we review those pursuant to Tenn. R. App. P. 13(d), *i.e.*, *de novo* with a presumption of correctness unless the evidence preponderates otherwise. *See In re the Adoption of A.M.H.*, 2007 WL 160953, at \*13. Additionally, "[i]n weighing the preponderance of the evidence, great weight is afforded to the trial court's determinations of witness credibility, which shall not be reversed absent clear and convincing evidence to the contrary." *Id.*

#### **IV. PERSISTENCE OF CONDITIONS**

Persistence of conditions as a statutory ground to terminate parental rights found in Tenn. Code Ann. § 36-1-113(g)(3) and is described as follows:

- (3) The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:

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<sup>6</sup>The Court also stated the generally applicable standard of review for findings of fact and questions of law in its Standard of Review section of the A.M.H. opinion, as well as generally applicable rules on credibility determinations.

(A) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;

(B) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and

(C) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home.

These grounds must be interpreted and applied in accordance with the express legislative intent of our statutory system of child removal, foster care, and adoption. One of the stated purposes of these statutes is "to protect [children] from needless prolonged placement in foster care and the uncertainty it provides, and to provide them a reasonable assurance that, if an early return to the care of their parents is not possible, they will be placed in a permanent home at an early date." Tenn. Code Ann. § 37-2-401(a). Our courts have recognized the significance of permanency as the goal of decisions involving future placement of children and termination of parental rights. *See, e.g., State Dep't of Human Servs. v. Smith*, 785 S.W.2d 336, 338 (Tenn. 1990).

On appeal, Mother argues that DCS failed in its required duty to make reasonable efforts to assist her in meeting the goals of her permanency plan. Furthermore, Mother also argues that there is no clear and convincing evidence that continuation of the parent/child relationship greatly diminishes F.C.M.'s chances of early integration into a safe, stable, and permanent home under subsection (C) of Tenn. Code Ann. § 36-1-113(g)(3) above.

#### **A. Reasonable Efforts**

When a child is removed from a parent's custody, the Department is "statutorily required to make reasonable efforts to reunite a family after removing children from their parents' custody." *In re Giorgianna H.*, 205 S.W.3d 508, 518 (Tenn. Ct. App. 2006). These efforts are directed at assisting the parents in remedying the circumstances that caused the removal. The success of a parent's remedial efforts can depend on the Department's assistance and support. *Id.* Therefore, in order to sustain a termination on the ground of persisting conditions, in addition to the elements of Tenn. Code Ann. § 36-1-113(g)(3)(A), the Department must also establish by clear and convincing evidence that it made reasonable efforts to reunite the family. *Id.*

It is not required that the Department's efforts be "herculean" but, on the other hand, it requires that the Department do more than simply providing parents a list of services. *Id.* at 519. In this context, the Department's efforts are reasonable "if the Department has exercised 'reasonable



care and diligence . . . to provide services related to meeting the needs of the child and the family.’”  
*Id.*, citing Tenn. Code Ann. § 37-1-166(g)(1)(2005).

The reasonableness of the Department’s efforts depends upon the circumstances of the particular case. The factors that courts use to determine the reasonableness of the Department’s efforts include: (1) the reasons for separating the parent from his or her children, (2) the parent’s physical and mental abilities, (3) the resources available to the parent, (4) the parent’s efforts to remedy the conditions that required the removal of the children, (5) the resources available to the Department, (6) the duration and extent of the parent’s remedial efforts, and (7) the closeness of the fit between the conditions that led to the initial removal of the children, the requirements of the permanency plan, and the Department’s efforts. [citations omitted].

The Department does not have the sole obligation to remedy the conditions that required the removal of children from their parents’ custody. When reunification of the family is a goal, the parents share responsibility for addressing these conditions as well. Thus, parents desiring the return of their children must also make reasonable and appropriate efforts to rehabilitate themselves and to remedy the conditions that required the Department to remove their children from their custody.

*Id.* (citations omitted).

Reunification “is a two-way street” such that the Department is not required to accomplish reunification without the assistance of parents. *In re Randall B.*, No. M2006-00055-COA-R3PT, 2006 WL 2792158 at \*6 (Tenn. Ct. App. Sept. 28, 2006) (No Tenn. R. App. P. 11 application filed.). Parents must also make reasonable efforts to rehabilitate themselves once services have been made available to them. *Id.*; see also *In re J.L.E.*, No. M2004-02133-COA-R3-PT, 2005 WL 1541862 at \*13 (Tenn. Ct. App. June 30, 2005) (No Tenn. R. App. P. 11 application filed).

The trial court found that DCS did not assist Mother in completion of her responsibilities under the permanency plan. The trial court’s inquiry, however, did not stop here. Instead, the court properly examined the question of whether DCS made reasonable efforts to effect reunification. Under the circumstances, the trial court concluded that there was clear and convincing evidence that the Department’s efforts were reasonable. We agree.

The evidence showed that Mother’s arrests and subsequent incarcerations significantly affected the Department’s ability to assist Mother in accessing needed services. Even while Mother was in prison Ms. Moody was able to arrange for a psychological evaluation that was cancelled due to Mother’s release. When Mother was out of jail, the record shows Ms. Moody consistently made diligent efforts to locate Mother so she could provide assistance. Mother, however, kept her whereabouts a secret from Ms. Moody out of fear of arrest. Mother’s repeated arrests and unwillingness to be located significantly impeded the ability of DCS to assist Mother. DCS was not the impediment here. We agree with the trial court that there exists clear and convincing evidence

in the record that the Department made reasonable efforts, under the circumstances, to help Mother improve the conditions that led to the child's removal or prevented her safe return to Mother.

### **B. Early Integration**

Mother argues on appeal that the evidence does not support the third prong of Tenn. Code Ann. § 36-1-113(g)(3)(c) - that continuation of Mother's parental rights diminishes F.C.M.'s chance of early integration into a permanent home.

The trial court heard this matter in September of 2005. F.C.M. had been in state custody by then for two years. When Mother went before her parole board, her behavior guaranteed her earliest possible release date to be June of 2006. In other words, Mother was not even trying to get out of jail. As the judge found, even when Mother is released from prison, the court would require that Mother prove she could provide a stable drug free environment for F.C.M.. There is no question that the evidence is clear and convincing that continuation of Mother's rights diminishes F.C.M.'s chances of early integration into a safe, stable and permanent home.

### **V. BEST INTEREST**

After grounds have been established by clear and convincing evidence, in order to terminate parental rights, it must be shown by clear and convincing evidence to be in the child's best interest. This determination is governed by Tenn. Code Ann. § 36-1-113(i) which provides as follows:

(i) In determining whether termination of parental or guardianship rights is in the best interest of the child pursuant to this part, the court shall consider, but is not limited to, the following:

- (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
- (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
- (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
- (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
- (5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;
- (6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional

or psychological abuse, or neglect toward the child, or another child or adult in the family or household;

(7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;

(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or

(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

The trial court found that all of the factors listed above, except the sixth, supported a finding that the child's best interest supported termination.

Since it would be a minimum of two (2) years before the Court would consider reunification under a best case scenario, the Court cannot condone the minor child remaining in limbo for that long a period of time. The Defendant Mother has failed to make such an adjustment of circumstances, conduct or conditions as to make it safe and in the child's best interest to be returned to her.

We agree that Mother had not made an adjustment in her conduct such that a lasting adjustment seems possible. Mother's drug use remained unabated during the period after F.C.M. was taken into custody. Mother was arrested and jailed several times during this period as a result of her substance abuse. Mother's behavior before the parole board leads to the inescapable conclusion that her goal is not reunification with F.C.M. In large part due to Mother's disinterest coupled with her threatening behavior, at the time of the hearing Mother has not spoken to or seen F.C.M. since December 29, 2003, over 1-1/2 years. Mother failed to cooperate with DCS during the time she was out of jail. As the court found, it would be some period of time after her release for Mother to establish a stable environment so that she could regain custody, even if everything went perfectly. The psychologist who saw Mother saw little reason to believe that would occur. There is clear and convincing evidence that termination of parental rights is in the best interest of F.C.M.

Based on the foregoing, the trial court's termination of parental rights based upon persistence of conditions under Tenn. Code Ann. § 36-1-113(g)(3) is affirmed. Costs of this appeal are taxed against the appellant, D.S.M. for which execution may issue if necessary.

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PATRICIA J. COTTRELL, JUDGE